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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 01-216
FM Table of Allotments	)	RM-10223
FM Broadcast Stations	)	
(Valliant, Oklahoma)	)	
 Amendment of Section 73.202(b),	)	MM Docket No. 01-209
FM Table of Allotments	)	RM-10224
FM Broadcast Stations	)	
(Broken Bow, Oklahoma)	)	

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

REPLY COMMENTS

Radio One Licenses, Inc. ("ROL"), by its counsel hereby submits its reply comments in the above-captioned proceedings. *See Broken Bow, Oklahoma, et al.*, DA 01-2058, released August 31, 2001. ROL's reply relates to the "Reply Comments of Maurice Salsa" in MM Docket No. 01-216, dated October 29, 2001, which as indicated herein tie that docketed proceeding together with MM Docket No. 01-209. In support hereof, ROL respectfully states as follows.

1. In its "Comments and Counterproposal" filed in MM Docket No. 01-216, ROL proposed to resolve a conflict between its application for a modification of the facilities of Station KTXQ-FM, Gainesville, Texas, and the Commission's proposal to allot Channel 234C3 to Valliant pursuant to a request for rulemaking filed by Salsa. ROL proposed to resolve the

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conflict either by a site restriction on the Valliant Channel 234C3 allotment using coordinates very similar to those requested by Mr. Salsa in his request for rulemaking or by changing the Valliant Channel 234 allotment to a Class A allotment.

2. In his reply comments, Salsa claims that the proposed site restriction on the Channel 234C3 allotment is not a possibility due to a prior filed rulemaking petition for Broken Bow, Oklahoma, which he states was received by the Commission's mail room on October 17, 2001 – five days before ROL filed its Comments and Counterproposal. Even were one to concede that the Broken Bow rulemaking petition is legitimate, the mere filing of that petition does not preclude ROL from filing its Comments and Counterproposal unless the Broken Bow rulemaking petition was itself a counterproposal filed before the deadline in another pending docketed rulemaking proceeding in which the counterproposal deadline passed before ROL filed its Comments and Counterproposal. ROL is not aware of any such proceeding that would give the Broken Bow rulemaking proposal cut-off status with respect to ROL.

3. As a result, any legitimate mutually exclusive filings filed before the October 22, 2001, deadline for counterproposals in MM Docket No. 01-216 are entitled to comparative consideration under the Commission's criteria for conflicting proposals in an allotment proceeding. Therefore, at the very least, ROL's proposed resolution of the MM Docket No. 01-216 proceeding by use of a site restriction is entitled to comparative consideration with the Broken Bow petition for rulemaking filed under the name of Jeraldine Anderson.<sup>1</sup>

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<sup>1</sup> The *mal fides* of the Anderson filing are apparent. It was obviously coordinated with Salsa's withdrawal of a pending petition for rulemaking for Clayton, Oklahoma. The dates of the two documents are separated by only one day. Thus, Anderson could not have known of the Clayton withdrawal unless alerted to it by Salsa. The Broken Bow and Clayton documents also appear to have been created on the same computer. It strains credulity that the Broken Bow

4. Salsa also states that ROL's proposed Channel 234A alternative should be rejected because Valliant deserves a station that can be economically viable. However, Salsa presents no evidence as to why Valliant, a community of fewer than 800 persons, needs anything other than a Class A station in order to serve the first local service allotment priority. ROL intends to file supplemental comments demonstrating that its proposed allotment plan would clearly serve the purposes of Section 307(b) of the Communications Act better than the proposals set forth by Salsa and Anderson.<sup>2</sup>

5. As indicated above, Anderson's filing has the effect of tying the Valliant proceeding to the above-captioned pending docket proceeding involving a proposal by Salsa to allot yet another channel (Channel 285A) to Broken Bow.<sup>3</sup> (Anderson's proposal is actually to allot a third local service to Broken Bow – a community of only 3,961 persons **that already has an existing Class C2 service.**) *See Broken Bow, Oklahoma, et al.*, DA 01-2058, (MM Docket No. 01-209), released August 31, 2001. For that reason, ROL is filing a copy of these reply comments in both the MM Docket No. 01-209 and MM Docket No. 216 proceedings.

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filing, which so precisely serves Salsa's interest in hampering the Valliant site restriction proposed by ROL, could have been crafted by anyone acting independently of Salsa. Moreover, ROL notes that Salsa did not need to dismiss his own proposal to allot a first local service to Clayton in order for a new channel to be proposed for Broken Bow because Channel 265A was available at the time for allotment to Broken Bow from its city reference point **without conflicting with any pending proposal.**

<sup>2</sup> Such a showing by the date of these reply comments is not possible given that ROL did not receive Salsa's reply comments, which were served by mail, until yesterday.

<sup>3</sup> Anderson's filing and Salsa's own Broken Bow proposed allotment are separated by 53 channels and, therefore, must comply with the intermediate frequency ("IF") separations specified in the Commission Rules. Given the potential impact of IF interference on other stations on the FM band, such interference must be taken into account in considering which, if any, additional channels to allot to Broken Bow.

6. Notwithstanding the machinations of Salsa and Anderson, ROL is still able to provide herein a proposal to resolve the apparent conflict with ROL's application to modify the facilities of Station KTXQ-FM. Since the proposal does not require the addition of additional communities to the caption of the Valliant proceeding or the Broken Bow (MM Docket 01-209) proceeding, it is timely filed in reply comments in each of those proceedings.

7. Specifically, ROL notes that KTCY Licensing, Inc. ("KTCY"), licensee of Station KTCY(FM) in Pilot Point, Texas, has filed comments and a counterproposal in MM Docket 01-209. KTCY desires to upgrade its KTCY(FM) facility to Channel 285C0. In order to facilitate its upgrade, KTCY has proposed an allotment of Channel 265A at Broken Bow in lieu of the Channel 285A proposal reflected in MM Docket No. 01-209; allotment of Channel 227A at Antlers, Oklahoma, in lieu of the Channel 284A proposal reflected in MM Docket No. 01-269; and a site restriction on the Channel 226A allotment for Wright City, Oklahoma, proposed in MM Docket No. 01-255.<sup>4</sup>

8. ROL supports KTCY's counterproposal except that it requests that the Commission allot Channel 286A to Wright City in lieu of Channel 226A. In addition, ROL points out that Channel 224A can be allotted to Broken Bow in lieu of the Channel 232A proposal filed by Anderson.

9. The result of ROL's proposal would be a channel allotment plan that would provide channels for Valliant, Broken Bow, Antlers, and Wright City while still permitting a grant of ROL's application to modify the facilities of Station KTXQ-FM. As indicated in the

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<sup>4</sup> Salsa is the proponent for Broken Bow Channel 285A and Wright City Channel 226A. He filed supporting comments for the Antlers Channel 284A proposed allotment.

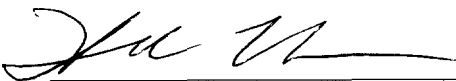
attached Engineering Exhibit EE-RM prepared by Mullaney Engineering, Inc., the Valliant, Broken Bow, and Wright City allotments can be made with site restrictions that also permit grant of the KTXQ-FM modification and the upgrade of Station KTCY to a Class C0 facility.

10. For the reasons set forth herein, ROL respectfully requests that the Commission act expeditiously to grant the pending KTXQ-FM modification application and adopt the following allotment plan with site restrictions described in the attached engineering statement:

Antlers, Oklahoma	Channel 227A
Wright City, Oklahoma	Channel 286A
Broken Bow, Oklahoma	Channels 291C2, 265A, 226A
Valliant, Oklahoma	Channel 234A or 234C3
Pilot Point, Texas	Channel 285C0

Respectfully submitted,

RADIO ONE LICENSES, INC.

By: 

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November 6, 2001

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**ENGINEERING EXHIBIT EE-RM:**

**REPLY COMMENTS  
RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**MM DOCKET 01-216 - VALLIANT, OKLAHOMA  
MM DOCKET 01-209 - BROKEN BOW, OKLAHOMA**

**NOVEMBER 6, 2001**

ENGINEERING STATEMENT PREPARED ON BEHALF OF  
RADIO ONE LICENSES, INC.  
LICENSEE OF KTXQ-FM  
CHANNEL 233C - GAINESVILLE, TEXAS

**ENGINEERING EXHIBIT EE-RM:**

**REPLY COMMENTS  
RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**MM DOCKET 01-216 - VALLIANT, OKLAHOMA  
MM DOCKET 01-209 - BROKEN BOW, OKLAHOMA**

**TABLE OF CONTENTS:**

1. Declaration of Engineer.
2. Narrative Statement.
3. Figure 4, Allowable Area Map - 286A Wright City, OK.  
From Special Ref. Point.
4. Figure 5, Allowable Area Map - 224A Broken Bow, OK.  
From Special Ref. Point.

Figures 1-3 are in original engineering comment exhibit.

## Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Radio One Licenses, Inc., to prepare the instant engineering exhibit in support of its Reply Comments to amend the FM Table of Allotments in MM Dockets 01-216 & 01-209.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

John J. Mullaney<sup>DSA</sup>

John J. Mullaney, Consulting Engineer

Executed on the 6th day of November 2001



**ENGINEERING EXHIBIT EE-RM:**

**REPLY COMMENTS  
RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**MM DOCKET 01-216 - VALLIANT, OKLAHOMA  
MM DOCKET 01-209 - BROKEN BOW, OKLAHOMA**

**NARRATIVE STATEMENT:**

This engineering statement has been prepared on behalf of Radio One Licenses, Inc. ("ROL"), licensee of Radio Station KTXQ-FM, at Gainesville, Texas. KTXQ-FM has a pending application which is short spaced to a proposal to allot FM Channel 234C3 to Valliant, Oklahoma (MM Docket 01-216). The purpose of this statement is to provide engineering in support of its Reply Comments in MM Docket 01-216 at Valliant, Oklahoma and in MM Docket 01-209 at Broken Bow, Oklahoma. Both dockets have Reply Comments due on November 6, 2001.

The Broken Bow docket (01-209) has now become tied to the Valliant docket (01-216) by a recently filed rule making by Jeraldine Anderson to allot Ch. 232A to Broken Bow, OK. The reference point proposed by Anderson is in conflict with the site restriction proposed by ROL for 234C3 at Valliant. In addition, the proposed allotment of 232A should be considered a counterproposal to Docket 01-209 since it may preclude the allotment of Ch. 285A to Broken Bow. Anderson indicates that her proposal to allot 232A would be the first "**competing**" FM service (2<sup>nd</sup> actual FM service) and thus, is apparently unaware that Ch.285A is currently the subject of an

open proceeding (01-209) or Ch. 232A is intended as a counterproposal so as to be the 2<sup>nd</sup> aural service. Channel 285A and 232A are separated by 53 channels and thus, must comply with the Intermediate Frequency (I.F.) separations specified in the FCC rules. Given the potential devastating impact to the entire FM band when I.F. interference is possible it is only prudent that the FCC consider in Docket 01-209 the impact of this timely filed rule making / counterproposal (232A at Broken Bow) when arriving at its final decision as to what channel or how many channels should be allotted to Broken Bow. It should be noted that Broken Bow currently has one operating commercial FM station and if both 285A & 232A are allotted to Broken Bow there would be a total of three aural services allotted.

As shown herein, Adoption of the ROL counterproposal as explained herein will still permit Valliant to receive a first service (Class C3 or A) and will permit ROL to operate KTXQ-FM from a tall tower site.

**Reply Comments of Maurice Salsa - MM Docket 01-216**

In his reply comments Maurice Salsa indicates that ROL's proposal to use a site restriction to allot 234C3 at Valliant is unacceptable because of a prior filed rule making. However, the proposal to allot Ch. 232A at Broken Bow, OK, was only filed on October 16, 2001. It does not appear to be in conflict with any prior filed proposal and thus, is not cut-off or protected from other conflicting proposals such as submitted by ROL.

ROL has made an analysis of the proposal to allot 232A to Broken Bow, OK, and it finds that the two proposals are mutually exclusive, because the needed site restriction to eliminate a short spacing between ROL's requested site restriction on 234C3 places the tower site for 232A at Broken Bow too far from Broken Bow to comply with the city grade requirements.

It should be noted that the allotment of 232A to Broken Bow only became possible when on October 17, 2001 (one day after Anderson's proposal for Broken Bow), Maurice Salsa filed in MM Docket 01-191 a motion to dismiss his support for the allotment of Ch. 232C3 to Clayton, Oklahoma, as its first aural service. The request for dismissal was filed despite the fact that Salsa filed comments in support of the Clayton allotment on 8/27/2001. The request for dismissal was apparently done to facilitate the allotment of a 2<sup>nd</sup> or 3<sup>rd</sup> service to Broken Bow, OK. It is curious to note that Salsa did not need to dismiss his own proposal to allot a **first service** to Clayton in order for a new channel to be proposed for Broken Bow since Ch. 265A was at the time available for allotment to Broken Bow from its city reference point **without conflicting with any other pending proposal.**

For some undisclosed reason, Anderson & Salsa felt it necessary to specifically request 232A at Broken Bow (not 265A) despite the I.F. interference potential and despite the obvious conflict with ROL's pending application at Gainesville. It also appears that Maurice Salsa is the proponent of 285A at Broken Bow (01-209) and despite filing supporting comments for that single channel allotment on September 21, 2001, he now wishes to have two channels (2<sup>nd</sup> & 3<sup>rd</sup> aural services) allotted simultaneously.

Salsa also rejects ROL's alternative to allot 234A to Valliant in lieu of 234C3. However, Salsa does not dispute the fact that a 234A allotment protects both the 232A proposal at Broken Bow and the pending application of KTXQ-FM. According to the 2000 census, the city of Valliant has a population of 771 persons (11.7% reduction from 1990 Census). The vast majority of FM allotments within the United States are for Class A facilities and the use of Class A allotments in small communities is appropriate. In addition, Salsa makes no mention of the potential interference impact of two FM channels with Intermediate Frequency protection requirements being licensed to the same community of license. ROL renews its support for allotment of Ch. 234A in lieu of 234C3 at Valliant.

#### **Comments of KTCY - MM Docket 01-209**

KTCY Licensing, Inc., licensee of KTCY on 285C1 at Pilot Point, Texas, filed comments and a counterproposal in MM Docket 01-209 at Broken Bow, OK. KTCY desires to upgrade its facility to 285C0. In order to facilitate its upgrade it requests the following changes:

Allotment of 265A in lieu of 285A at Broken Bow, OK, Docket 01-209.

Allotment of 227A in lieu of 284A at Antlers, OK, Docket 01-269.

A site restriction on 226A at Wright City, OK, Docket 01-255.

It should be noted that the Maurice Salsa is the proponent for Broken Bow & Wright City, OK, and that he filed supporting comments for Antlers, OK.

### **Solution Supported by Radio One**

ROL believes that despite the unexplained intermingling of the pending proposals it has a solution. ROL supports the comments of KTCY with the exception of the fact that it requests the allotment of 286A in lieu of 226A at Wright City, OK. In addition, ROL supports the allotment, if deemed to serve the public interest, of the 3<sup>rd</sup> aural service on 224A in lieu of 232A at Broken Bow, OK.

Figure 4 is an allowable area map for Ch. 286A at Wright City, OK. The proposed special reference point is located 5.6 km West-Southwest of the city of license. This point is located well within the 16 km city grade arc used for allotment of Class A channels. The proposed special reference coordinates for 286A are:

N. Latitude:	34°	02'	48"	NAD-27
W. Longitude:	95°	03'	41"	

Figure 5 is an allowable area map for Ch. 224A at Broken Bow, OK. The proposed special reference point is located 9 km West-Southwest of the city of license. This point is located well within the 16 km city grade arc used for allotment of Class A channels. The proposed special reference coordinates for 224A are:

N. Latitude:	34°	00'	00"	NAD-27
W. Longitude:	94°	49'	50"	

Use of Channel 224A in lieu 232A at Broken Bow will eliminate the conflict with ROL's pending change of site application at Gainesville. Thus, ROL's proposed site restriction on 234C3 has no further conflict and will permit Valliant to obtain a C3 facility while permitting KTXQ-FM to move to its desired tower site.

ROL believes that its requests result in a preferential arrangement of allotments and therefore, serves the public interest.

### SUMMARY

Radio One Licenses, Inc., licensee of Radio Station KTXQ-FM, at Gainesville, Texas herein files its Reply Comments in MM Docket 01-216 & Docket 01-209. ROL continues to support its request to modify the pending proposal in MM Docket 01-216 at Valliant, Oklahoma, to (1) site restrict the reference point for Ch. 234C3 by 7.3 km to the East-Northeast of the city or (2) allot Ch. 234A in lieu of 234C3 if the site restriction is not adopted. ROL also supports the proposed changes filed by KTCY in MM Docket 01-209. In addition, ROL requests modification of the 232A allotment at Broken Bow and of 226A at Wright City, OK (differs from KTCY).

	<b>Proposed in NPRM</b>	<b>Proposal of Radio One Licenses</b>
<b>MM Docket 01-216</b> Valliant, OK	234C3	234C3 # or 234A
<b>MM Docket 01-209</b> Broken Bow, OK	<u>291C2</u> , 285A, 232A	<u>291C2</u> , 265A, 226A
Pilot Point, TX	<u>285C1</u>	285C0
<b>MM Docket 01-255</b> Wright City, OK	226A	286A
<b>MM Docket 01-269</b> Antlers, OK	<u>222C2, 272A</u> , 284A	<u>222C2, 272A</u> , 227A

\_\_\_\_\_ Existing Allotment, # site restricted

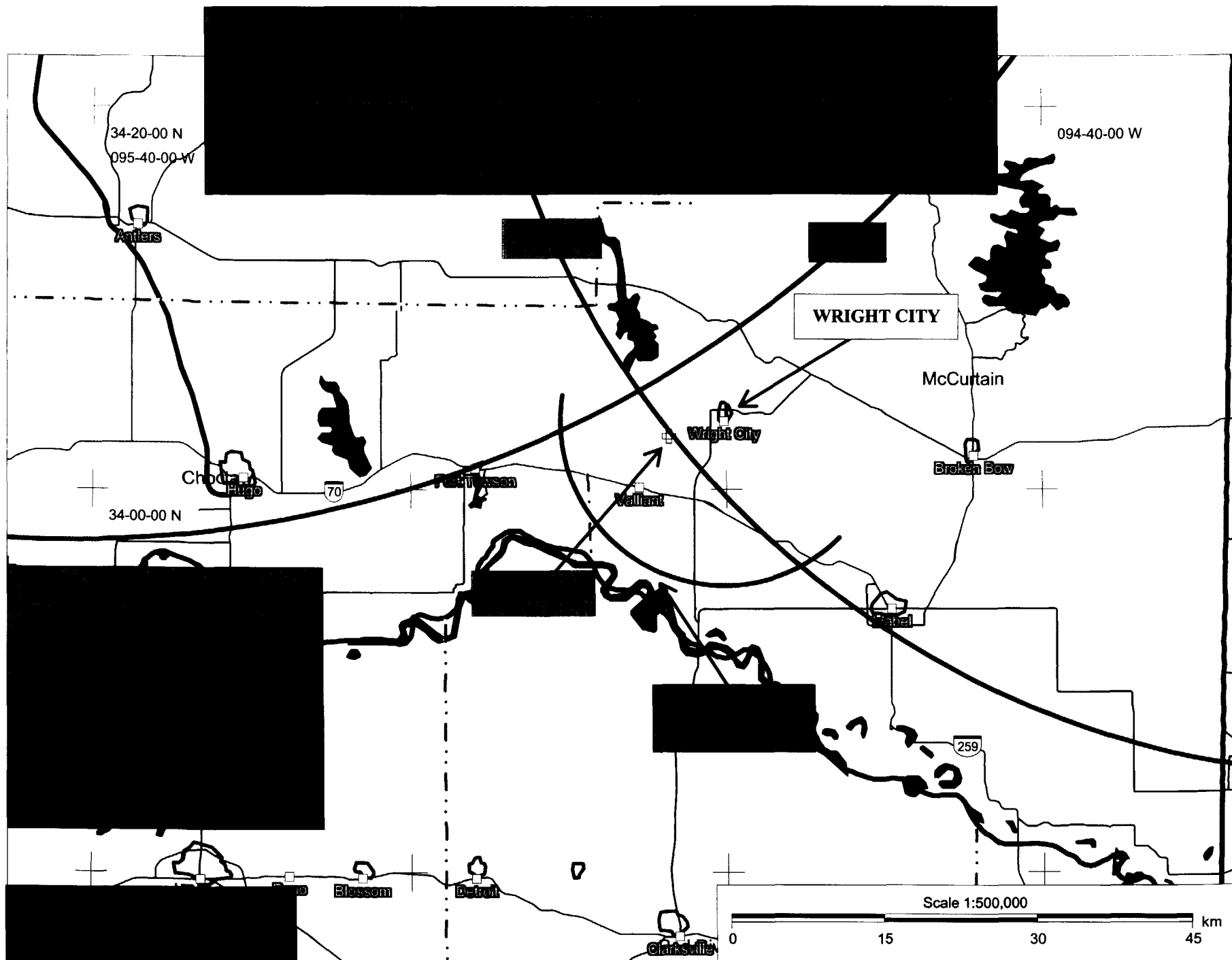
Radio One believes that modification of the NPRMs as proposed herein will serve the public interest by allotting new channels to Valliant, Broken Bow & Wright City, OK and by permitting a grant of the KTXQ-FM change of site application. If the Class A channel is allotted, as requested herein, to Valliant, OK, Radio One will file a Form 175 for the Valliant FM facility at the appropriate time.

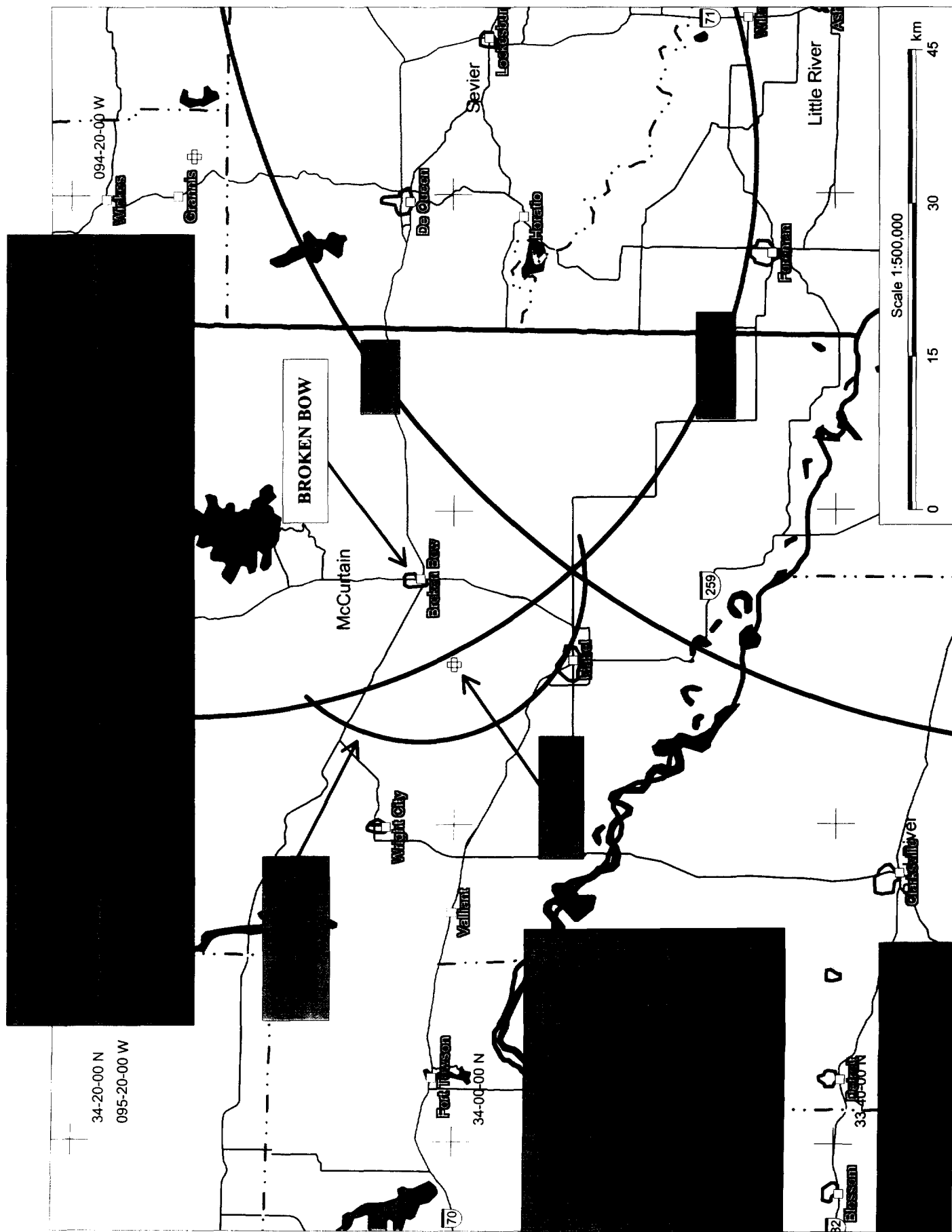
John J. Mullaney<sup>DSA</sup>

John J. Mullaney, Consulting Engineer

November 6, 2001.







## CERTIFICATE OF SERVICE

I, Donna Sanchez-Arango, a secretary in the law firm of Davis Wright Tremaine LLP, do hereby certify that I have on this 6th day of November, 2001, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

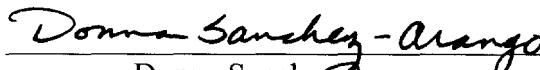
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